IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.443 of 2007.

Date of decision: 22.05.2007

Rattan Singh ....Petitioner

-Versus-

State of H.P. and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? yes

For the Petitioner: Mr.Ajay Mohan Goel, Advocate.

For Respondents: Mr.M.S.Chandel,A.G. with Mr.R.M. Bisht, Dy.A.G. for respondents 1 to 4.
Mr.Shashi Bhushan, counsel for R-5&6.

Deepak Gupta, J.(Oral)

The Excise and Taxation Department issued an Excise Policy and arrangements for the year 2007-2008. Under this Policy individual applications were invited for allotment of retail vends. The respondent No.2 issued public notice in terms of the Excise Policy on 22.2.2007 inviting applications for allotment of retail sale license of country liquor and Indian made foreign liquor. As per this scheme and the notice of allotment, the allotment was to be made by draw of lots in case there were more than one application for a particular vend/unit. The draw of lot was to be conducted by a Committee consisting of the Deputy Commissioner of the District, representative of the Excise and Taxation Department Himachal

Pradesh, the Deputy Excise and Taxation Commissioner of the respective Zone and the Assistant Excise and Taxation Commissioner/Excise and Taxation Officer Incharge of the Districts. As per the notice & the terms and conditions it was not necessary for the applicant to be present on the date when the lots were drawn. However, the successful allottee was required to deposit 50% of the basic license fee on the day of draw of lots and 50% within 7 days thereafter or 31st March, 2007 whichever was earlier.

The petitioner herein and respondents 5&6 alongwith 6 other persons had applied for Unit 7/2 for the vend at Nerwa, Gumma and Jhikhipul in Tehsil Chopal, District Shimla. Draw of lots were held at Hotel Peter hoff, shimla on 14th March, 2007 under the Chairmanship of the Deputy Commissioner, Shimla.

It is the admitted case of the parties that when the draw of lots was done the first name taken out was that of respondent No.5 Shailendera Singh. Hereafter the facts are disputed.

According to the petitioner, respondent No.6 Dhirendera Singh who is the brother of respondent No.5 Shailendera Singh impersonated as Shailendera Singh and tried to deposit the amount due. On this the petitioner raised an objection and the Deputy Commissioner found that person who had stood up was not Shailendera Singh and did not have any authority or attorney to represent Shailendera Singh. Thereafter, the allotment in favour of Shailendera Singh was cancelled and lot was allotted in favour of the petitioner whose name was the next in the draw of lots and the

petitioner also deposited the fees. The petitioner also alleged that thereafter he hired a shop, employed salesmen and Manager and applied to the respondents-State for grant of permits to lift the liquor. However, to his shock and surprise the permit to lift liquor was not granted by the Excise and Taxation Inspector, Chopal on the ground that the respondent No.2 Excise and Taxation Commissioner, Himachal Pradesh had verbally directed that the petitioner should not be allowed to lift the liquor till 2 p.m. on 2nd April, 2007. According to the petitioner he immediately rushed to Shimla and met respondent No.2 personally on 2.4.2007 and submitted a representation Annexure P-6 but respondent No.2 told him that he had decided to allot the Unit to respondent No.5.

The case of the petitioner is that Shailendera Singh was not present on the spot and respondent No.6 Dhirendera Singh tried to impersonate himself as Shailendera Singh and therefore the Chairman of the allotment Committee rightly rejected the allotment and has rightly allotted the Unit in question to the petitioner.

The case of the respondent-State as put-forth by respondent No.2 is that though Shailendera Singh respondent No.5 was not present at the time of draw of lots on 14.3.2007, his elder brother respondent No.6 who was present at the time of draw of lots was ready to deposit the amount which offer was not considered by the Selection Committee in the absence of any power of attorney or authorization from respondent No.5. Respondent No.5 made a representation to respondent No.2. According to respondent No.2 he

called both the parties i.e. the petitioner and respondent No.5 for hearing the matter on 2.4.2007 and after hearing and recording the statements of both the parties he decided the matter in favour of respondent No.5 and passed the order Annexure R/B on 2.4.2007. A perusal of this order shows that respondent No.2 held that from the perusal of the Excise Announcements it was found that the personal presence of the applicant was not expressly required at the time of draw of lots and anybody could appear on behalf of the applicant who was found to be successful. On this ground he has passed the order in favour of respondent No.5.

Respondents No.5&6 have filed a common reply on the affidavit of respondent No.6. In this reply the respondents have taken the following plea:

> "14.That the contents of para 14 of the writ petition are denied being wrong, false, baseless and incorrect. As a matter of fact the entire episode occurred due to some misconception created by the petitioner himself. It is most respectfully submitted that the respondent no.6 had been duly authorized by the respondent no.5 to participate in the draw of lots as he himself was unable to come to Shimla, due to heavy snowfall. On 14.03.2007 when respondent No.5 was declared successful the respondent No.6 came forward to deposit the 50% amount. On this the petitioner objected that since the successful candidate is not present himself so the allotment should be made to him, where as the same was not the requirement as per the public notice qua the liquor vends in dispute, which fact is crystal clear from relevant extract of public notice i.e. Annexure R-1 with this reply. Otherwise also this fact stands admitted by the petitioner in Para 9 of writ petition. More

over the respondent no.6 never impersonated as respondent no.5 as a matter of fact he had only stood up for respondent no.6 when respondent no.6 was declared successful and he had duly informed the respondent no.3 that he is the attorney of respondent no.5. Due to the absence of 6 had also handed over the "special power of attorney" i.e. Annexure R-2 and road certificate in original to respondent no.3. As a matter of fact the same was executed due to the reason that the roads of Chopal were blocked due to snowfall, which fact is clear from Annexure R/c annexed with the reply on behalf of the respondents no.1 to 4. So far as allegations of the disqualification of the respondent no.5 by the respondent no.3 are concerned same are wrong and incorrect. As a matter of fact the allotment was never cancelled rather same was kept in abeyance due to the confusion created by the petitioner himself. It is vehemently denied that the draw of lots for the liquor vends in dispute were held again. As a matter of fact the draw of lots were held only once and the petitioner stood second in the same. The fact of allotment to the petitioner by the respondent is incorrect. Rest of the contents of para 14 are denied and the petitioner be put to strict proof of the same."

Rejoinder has been filed to the replies filed by all the respondents.

We have heard Sh.Ajay Mohan Goel, learned counsel for the petitioner, Sh.M.S.Chandel, learned Advocate General and Shri Shashi Bhushan, learned counsel for respondents 5&6. We have also perused the entire records of the case. It would be pertinent to mention that the entire proceeds of the draw of lots were video-graphed and we have also gone through the video recording with regard to this lot.

At the outset we may notice some admitted facts. There is no dispute between the parties that in the draw of lots respondent No.5 Shailendera Singh was at No.1 and petitioner Rattan Singh was at No.2. It is also admitted that Shailendera Singh was not present when the draw of lots took place and his brother respondent No.6 stood up and offered to deposit the amount at the time of draw of lots.

The controversy begins thereafter. Whereas according to the petitioner the respondent No.6 impersonated as respondent No.5 and tried to project that he himself was respondent No.5, according to respondent No.6 he never impersonated as respondent No.5 but only stood up on behalf of respondent No.5 and duly informed the respondent No.3 that he is the attorney of respondent No.5. According to him he also handed over the special power of attorney as well as the road certificate showing that the road from Chopal to Shimla was blocked to respondent No.3. The case of the respondents is that thereafter no allotment was made and the same was kept in abeyance.

We are clearly of the view that there was no requirement that the successful allottee should be present in person at the time of draw of lots. Any person could deposit the money on his behalf. The respondent No.2 is correct in so far as he has held that the Excise Policy was silent in this regard and therefore the presence of the successful allottee was not necessary at the time of draw of lots. However, we are also clearly of the view that the person who so

stands up on behalf of the successful allottee must clearly state that he is standing up on behalf of such person. He cannot say that he is the successful allottee himself. In case he tries to impersonate then there can be no manner of doubt that such a person who commits an illegal and criminal act of impersonation cannot be given the benefit of allotment.

We have gone through the record in this case and we find that at the time of draw of lots the following note was made by the allotment Committee and this note is signed by Sh.Tarun Kapoor, Deputy Commissioner, Shimla who was the Chairman of the Committee and by the Excise and Taxation Officer, Rohru on 14.3.2007. This note reads as follows:

> "Initially the application was accepted as a person appeared and stated that he is Shailender Singh. However, when his form was checked he was found not be Shailender. Then he admitted that he was actually Sh.Dhirender brother of Shailender. He impersonated himself to be Shailender. He was not in possession of power of attorney, hence application rejected and allotted to first in waiting panel.
>
> Sd/ sd/
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> E&T.O Rohru, 14.3.07. Tarun Kapoor"

This note clearly shows that the person who stood up stated that he is Shailendera Singh. It was only when the form (which contains the photograph of the applicant) was checked it was found that he was not Shailendera Singh and he admitted that he is the brother of Shailendera Singh. Another piece of evidence which clearly demolishes the case of the respondent No.6 and supports the

case of the petitioner is the allotment sheet of the license in question. In this the name of successful allottee and the first and second panelists is given. The successful allottee is shown as Shailendera Singh and against this name the signatures are "S Singh." Even, respondents 5&6 have admitted that Shailendera Singh was not present at the time of allotment and it was only Dhirendera Singh who was present. Admittedly it is Dhirendera Singh who has signed the allotment sheet. If he was not impersonating as Shailendera Singh and was appearing on behalf of Shailendera Singh why did he sign as "S Singh". The signatures on this allotment sheet also do not tally with the other signatures of Dhirendera Singh in which he has signed as Dhirendera Singh.

From the video recording no clear-cut picture emerges. However, after the name of Shailendra Singh and the two panelists were announced in the background a voice can be heard saying "Yeh Aadmi Shailender Singh Nahin hai". Thereafter, the Deputy Commissioner makes an announcement that impersonation is a criminal offence and nobody should try to impersonate as somebody else.

All these contemporaneous pieces of evidence clearly show that respondent No.6 did not stand up as representative/attorney/brother of respondent No.5 but tried to impersonate himself as respondent No.5. Even in this Court the respondent No.6 has clearly filed an affidavit which is false. He has stated on oath that he had only informed the respondent No.3 that he

is the attorney of respondent No.5 and that he had also handed over the special power of attorney Annexure R-2 and road certificate in original to respondent No.3. This statement is patently false. The special power of attorney has been executed on 14th March, 2007 at Chopal and the copy annexed as Annexure R-2 with the reply shows that it was faxed at 3.30 p.m. on the said date. It is quite clear that this power of attorney was executed much after the draw of lots had already taken place in the earlier part of the day. Therefore, the question of producing the original power of attorney or even a copy thereof at the time of the draw of lots does not arise. In fact counsel for the respondents 5&6 submits that this averment has been mistakenly made in the writ petition.

From the perusal of the aforesaid material the position which emerges is that the respondent No.6 impersonated as respondent No.5. It is also clear that he had not produced any power of attorney before the allotment Committee. In fact, in our considered opinion, he tried to mislead the authorities into believing that he was Shailendera Singh. It was only after he was caught that he tried to put up a false case that he was the attorney of respondent No.5. In the facts and circumstances of the present case when the respondent No.6 himself was also an applicant for the same liquor vends, he could not have represented his brother respondent No.5 either as his representative or as a power of attorney. A competitor cannot be the attorney/representative of his rival in the trade for the unit for which they are both competing.

We have also perused the file of the Commissioner, Excise and Taxation. As mentioned above, the Commissioner, Excise and Taxation in his affidavit filed before us stated that he passed the impugned order on 2.4.2007 after calling both the parties, hearing both of them, recording the statements of both parties. This statement made on the affidavit of Sh.S.K.B.S. Negi is also false. A perusal of the record produced before us does not show that any notice was ever sent to the petitioner Rattan Singh. There is no statement of Rattan Singh recorded on the file. No doubt on the file the representation of the petitioner is also on record but there is no material on the file to show that any notice was sent to the petitioner Rattan Singh or that he made any statement before the Commissioner. Statement of Shailendera Singh has been recorded on oath but no opportunity to cross examine him has been given to any party. We are clearly of the view that Shri S.K.B.S. Negi has willfully and knowingly filed a false affidavit in this Court since the record does not reveal that any notice was sent to Rattan Singh nor does it reveal that any statement of Rattan Singh was recorded. In CWP No. 274 of 2005 titled Vijay Kumar vs. State, we had found that the same Officer had filed an incorrect affidavit and we had let off him with a warning. This is the second time in less than 3 months that we have come across a wrong and incorrect affidavit filed by the same Officer. We deprecate this practice of filing wrong affidavits. Despite being warned earlier, the officer has not been

careful enough and has not cared to verify and check the facts before filing an affidavit in the Court.

Keeping in view the aforesaid discussion, we are clearly of the view that the order dated 2.4.2007 passed by respondent No.2 Shri S.K.B.S. Negi is totally illegal and arbitrary. He has not even taken into consideration the noting made by the allotment Committee that respondent No.6 had tried to impersonate as Shailendera Singh. A person who impersonates some other person cannot be granted any benefit. We accordingly quash the orders and direct that w.e.f. Ist June, 2007 the petitioner shall be permitted to run and operate the liquor vends in question.

We have noted with dismay that respondent No.6 who is an Advocate as per his affidavit filed with his reply to the petition has not only impersonated as his brother but also filed a false affidavit in this Court. We are also extremely doubtful whether a person following the noble profession of law can engage in the liquor trade and could have applied for the grant of liquor vend. We, therefore, direct that a copy of this judgment be sent to the Chairman, Bar Council of Himachal Pradesh to take appropriate action in this regard. We have also found that Shri S.K.B.S. Negi has filed a false affidavit. As noted above this is the second time that we have found that he has committed this misdemeanour. This action cannot be condoned. We therefore impose exemplary costs of Rs.20,000/- on respondents 5&6 to be shared by them equally and also impose costs of Rs.5000/- on Sh.S.K.B.S. Negi to be paid personally by him.

The original files are ordered to be returned to the learned Deputy Advocate General. He is however directed to file Photostat copies of the file of the respondent No.2 and the file relating to the allotment sheets i.e. file No.7 of Chopal Unit within the course of the day today.

(Deepak Gupta),
Judge

May 22, 2007.
PV

(Surinder Singh),
Judge